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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,331	03/27/2002	Dana Paul Gruenbacher	8166M	1461

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/089,331

Applicant(s)

GRUENBACHER ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-20, 22, 23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-20, 22, 23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings received on April 15, 2004 are approved.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-6, 10-20, 23, 25-28 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 25 and 30 now call for a resealable channel or distribution channel having "a predetermined location". However, the originally filed disclosure fails to describe or support "a predetermined location" for the resealable channel or distribution channel or even describe or support what constitutes such "a predetermined location". Hence, claims 1-6, 10-20, 23, 25-28 and 30 are directed to new matter.

4. Claims 2, 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "a barrier layer 25, the interior of which defines the front inner surface 32 that faces the wearer's hand during use" (note lines 32-33 on page 22) and "to protect the wearer's hand from contact with liquids absorbed by the back panel 26, it may be desirable for some applications to include an optional additional fluid impervious barrier layer 27, the interior of which defines the back inner surface 34 that faces the wearer's hand during use" (note lines 1-4 on page 28), does not reasonably provide enablement for "a first substantially fluid-impervious barrier layer is located between said reservoir and said second

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internal surface of said second side", as now called for by claim 2. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

5. Claims 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 13 now calls for "a second substantially fluid-impervious barrier layer disposed between said first barrier layer and said second internal surface". However, the originally filed disclosure merely supports "in order to protect the hand of the user from contact with the product during the dispensing and/or dispersing operation, the applicators of the present invention can include a barrier layer 25, the interior of which defines the front inner surface 32 that faces the wearer's hand during use. The barrier layer 25 is preferably impervious to the product" (note lines 30-33 on page 22). Hence, claim 13 is directed to new matter.

#### ***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by Ketner. Ketner discloses an applicator for distributing a substance onto a target surface (note lines 3-5 in col. 1) having all the claimed features including a first substrate (constituted by one of the porous sheets 26) and a flexible film dosing reservoir (constituted by container C1 when made of flexible plastic, note lines 59-62 in col. 2) comprising at least one frangible seal (note lines 51-52 in col. 2) or weak region 33 and a distribution channel formed by the edges 32 and disposed proximate the seal 33 (note Fig. 4) and containing a product (constituted by fluid 30), the reservoir C1 being disposed adjacent to the first substrate 26 (note Fig. 2), the product 30 being adapted to be

released sequentially through the seal and through the distribution channel to the first substrate via multiple applications of pressure to the reservoir C1 (note lines 55-58 and 69-74 in col. 2).

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-5, 10-20 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber et al. in view of Ketner. Gerber et al. disclose an applicator for distributing a substance onto a target surface having the claimed features including a first side or substrate 2 having a first internal surface and a first external surface, a second side 2 having a second internal surface and a second external surface (note Fig. 2), and at least one flexible film dosing reservoir (constituted by the outer gelatinous capsule 1, note lines 24-27 in the second column on page 1) comprising a resealable channel in fluid communication with the reservoir 1 (note from line 45 in the first column on page 2 to line 6 in the second column on page 2) and having a predetermined location (i.e., determined by where the user puts the pin or other sharp object, note lines 41-45 on page 2), the reservoir 1 containing a product (note lines 29-32 in the second column on page 1), the reservoir 1 being disposed between the first internal surface of the first side 2 and the second internal surface of the second side 2, and the product being adapted to be released from the reservoir 1 through the resealable channel and through the first side 2 via application of pressure to the reservoir 1 (note lines 21-25 in the first column on page 1, from line 45 in the first column on page 2 to line 2 in the second column on page 2, and lines 15-18 in the second column on page 2). Although Gerber et al. inherently discloses that the reservoir 1 has a predetermined weak region (constituted by the predetermined point where the outer shell of the reservoir 1 is penetrated by the pin or other sharp instrument), attention is directed to Ketner who discloses another applicator having a flexible film reservoir constituted by container C1 having frangible walls 28 provided with predetermined weak regions constituted by scored lines 34 (note lines 50-58 in col. 2) in order to permit the reservoir to break along the predetermined

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weak regions. It would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to form the reservoir 1 of Gerber et al. with weak regions in view of the teachings of Ketner in order to predetermine where the reservoir will break rather than relying on using an additional pin or other sharp instrument to penetrate the reservoir. With respect to claims 2 and 28, Gerber et al. also disclose using a substantially impervious barrier layer 4 located between the reservoir 1 and the internal surface of the second side 2 (note Fig. 3). With respect to claim 13, although Gerber et al. fail to disclose a plurality of fluid-impervious barrier layers 4 disposed on the second internal surface of the second side, mere duplication of parts has no patentable significance unless a new and unexpected result is produced (see MPEP § 2144.04(VI) (B))--but, in any event, to provide the second internal surface of the second side of Gerber et al. with two substantially fluid-impervious barrier layers 4 would be an obvious expedient to one of ordinary skill in the applicator art especially when better control of the egress of the material or fluid is desired. With regard to claims 11 and 14, Ketner further teaches the obviousness of using a second reservoir or plural compartments containing a second product or products (note lines 45-61 in col. 3 and lines 10-20 in col. 4). With regard to claims 3 and 27, Gerber et al. further disclose that the applicator is a pad (note line 1 in the first column on page 1). With respect to claim 4, Ketner additionally teaches the obviousness of using a rupturable reservoir (note lines 55-59 in col. 2). With respect to claim 5, Ketner further teaches the obviousness of using a reservoir rendered rupturable by a frangible seal (note lines 50-67 in col. 2). With respect to claim 12, Ketner additionally teaches the obviousness of forming the frangible seal with at least one stress concentrator (constituted by the scored lines 34). With regard to claim 11, Ketner also teaches the obviousness of using a reservoir that has a plurality of compartments for containing product wherein the compartments are adapted to provide at least one function (note lines 51-54 in col. 1) and the function being for mixing (note lines 50-56 in col. 3) and dispensing (note lines 59-61 in col. 3). With respect to claim 10, Gerber et al. further disclose a distribution head constituted by the opening through which the fluid escapes from the reservoir 1. With regard to claim 15, Ketner further teaches the obviousness of forming the

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reservoir of a material capable of varying seal strengths (note lines 27-35 in col. 4). With respect to claim 16, Ketner additionally teaches the obviousness of forming the first side of a substantially non-absorbent material (constituted when it is formed of plastic which is perforated, note lines 40-47 in col. 2). With respect to claim 17, Gerber et al. also disclose that the second side is made of a substantially absorbent material (note lines 1-3 in the first column on page 2). With respect to claim 18, the gauze layer 5 in Gerber et al. inherently constitutes a friction enhancing element located on at least one of the first and second sides. With regard to claim 19, the gauze layer 5 in Gerber et al. is inherently textured. With regard to claim 20, Gerber et al. further disclose locating the reservoir to avoid inadvertent dispensing (note lines 24-35 in the second column on page 1). With respect to claim 25, Ketner also teaches the obviousness of forming the reservoir of a rupturable laminate material (note lines 59-62 in col. 2). With regard to claim 25, Gerber et al. additionally disclose a flow restriction layer (constituted by layer 4, note Fig. 3 and lines 9-15 in the first column on page 2) disposed between the reservoir 1 and the first substrate (constituted by the bottom portion of layer 3). With respect to claim 29, Gerber et al. further disclose that the product is adapted to be released sequentially to the first substrate via multiple applications of pressure to the reservoir 1 (note lines 13-20 in the first column on page 1, from line 41 in the first column on page 2 to line 6 in the second column on page 2, and lines 13-20 in the second column on page 2).

10. Claims 6 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber et al. in view of Ketner as applied to claims 1-5, 10-20 and 25-29 above, and further in view of Koptis. Gerber et al. also disclose that the applicator can be folded (note Fig. 3). Although Gerber et al. fail to disclose that the reservoir is foldable proximate to the frangible seal, attention is directed to Koptis who discloses another applicator having its reservoir foldable (at fold line 13) proximate to the frangible seal 19 in order to provide a simple manner of dispensing the fluid from the reservoir by unfolding the applicator from a folded stored position (note from line 65 in col. 3 to line 2 in col. 4). It would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to form the reservoir of Gerber et al. so that it is foldable

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proximate to the frangible seal in view of the teachings of Koptis in order to provide a simple manner of dispensing the fluid from the reservoir by unfolding the applicator from a folded stored position. With regard to claim 22, Koptis further teaches the obviousness of using fluids or ingredients that chemically react with one another, when plural compartments or reservoirs are used, and inherently constitute a temperature changing element when the fluids or ingredients are mixed together (note lines 30-43 in col. 7).

11. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber et al. in view of Ketner as applied to claims 1-5, 10-20 and 25-29 above, and further in view of Schneider. Although Gerber et al. fail to disclose that one of the sides comprises at least one removable layer, attention is directed to Schneider who discloses another applicator having one side comprised of two plies or layers in order to provide that one ply or layer is used for one particular purpose such as dusting the target surface and then is removed to expose the second ply or layer which is used for another particular purpose such as polishing the target surface. It would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to form one side of Gerber et al. with a removable layer in view of the teachings of Schneider in order to provide that one ply or layer is used for one particular purpose and then is removed to expose the second ply or layer which is used for another particular purpose especially when plural steps are required to treat the target surface.

12. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ketner in view of Gerber et al. Ketner discloses an applicator for distributing a substance onto a target surface having the claimed features including a first substrate (constituted by one of the porous sheets 26) and a reservoir (constituted by container C1) containing a product (constituted by fluid 30), the reservoir C1 being disposed adjacent to the first substrate 26 (note Fig. 2) and having at least one weak region 34 having a comparatively low burst force (note lines 55-58 in col. 2) and a distribution channel formed by the edges 32 at a predetermined location on the reservoir C1 (note Figs. 1-3), the product 30 being adapted to be released sequentially through the seal and through the distribution channel to the first substrate via multiple applications of pressure to the



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reservoir C1 (note lines 55-58 and 69-74 in col. 2). Although Ketner fails to disclose a flow restriction layer between the reservoir C1 and the first substrate 26, attention is directed to Gerber et al. who disclose another applicator having a flexible film reservoir wherein a layer 4 is interposed between the reservoir 1 and a first side of the substrate 3 in order to limit the egress of material to the face of the pad and prevent excretions absorbed by the opposite face from entirely permeating the entire pad (note Fig. 3 and lines 9-17 in the first column on page 2). It would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to form the applicator of Ketner with a flow control layer disposed between the reservoir C1 and the first substrate 26 in view of the teachings of Gerber et al. in order to limit the egress of material to the face of the pad and prevent excretions absorbed by the opposite face from entirely permeating the entire pad.

#### *Response to Arguments*

13. Applicant's arguments filed August 26, 2004 have been fully considered but they are not deemed persuasive.

14. Applicant's arguments with respect to the rejection of claim 2, 13 and 14 under the first paragraph of 35 U.S.C. 112 have been carefully considered. However, the specific location of the barrier layer, i.e., "between the reservoir and the second internal surface of the second side", as called for by the claims, is not supported by the originally filed disclosure. Figure 2 of the drawings clearly shows the barrier layer 25 or 27 covering the internal surface of the reservoir. The language used in the claims is either inconsistent with the specification or is totally lacking support in order to fulfill the requirements of the first paragraph of 35 U.S.C. 112 which calls for the specification to contain a written description of the invention in full, clear, concise, and exact terms. It is apparent that confusion is resulting from the claimed language "second side" and "second internal surface" and also from "first side" and "first internal surface" since the specification fails to describe what constitutes such sides and internal surfaces.

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15. Applicant's arguments regarding the art rejection of claim 29 by the Ketner reference have been carefully considered. However, the Ketner reference clearly describes sequential release of the product in the reservoir via multiple applications (note lines 69-74' in col. 2) wherein one application is the breaking of the score walls 28 and the second application is the breaking of seal 33.

16. Applicant's arguments with regard to the art rejections utilizing the Gerber and Ketner references have been carefully considered. However, the specific point or predetermined location in Gerber is determined by where the user puts the pin or other sharp object thus creating a focused delivery of product. Similarly, the score walls 28 and the seal 33 in Ketner constitute the specific points or predetermined locations that create a focused delivery of product.

### *Conclusion*

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. In mid to late November, 2004, the examiner's office will move to the new complex

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in Alexandria, Virginia. Upon moving to the new complex, the examiner's new telephone number will be 571-272-4894.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

October 18, 2004



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